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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

) No. _____

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 Plaintiff Sierra Club, through counsel, alleges as follows:

2 **INTRODUCTION**

3 1. Defendant U.S. Department of Interior (“DOI”) violated the Freedom of
4 Information Act (“FOIA”), 5 U.S.C. § 552, by failing to produce documents in its possession
5 following lawful requests by Sierra Club.

6 2. Sierra Club, the nation’s oldest grassroots environmental organization and a strong
7 supporter and proponent of clean energy sources, sought to further its long-standing interest in
8 government accountability and transparency by filing a series of FOIA requests for documents
9 showing communications between DOI officials and external parties. This lawsuit concerns Sierra
10 Club’s February 20, 2019 FOIA request, which asked that DOI update the results of previous
11 requests that are the subject of a related case, *Sierra Club v. U.S. Department of Interior*, No. 18-
12 cv-797 (N.D. Cal.).

13 3. In 2017 and 2019, Sierra Club sent DOI a series of FOIA requests asking for
14 documents showing certain DOI officials’ external communications. DOI has conducted searches
15 and has begun providing documents in response to those requests, but has informed Sierra Club
16 that the searches used to obtain responsive documents are only up to date through March 2018.
17 DOI also has refused to update its searches to make the results current.

18 4. Consequently, on February 20, 2019, Sierra Club sent a request to DOI asking that
19 DOI update its searches in response to Sierra Club’s previous FOIA requests. DOI ignored the
20 deadline required by FOIA and still has not made a determination on Sierra Club’s request, nor
21 produced all responsive, non-exempt documents, as FOIA required it to do. In doing so, DOI has
22 violated the law.

23 5. Sierra Club brings this lawsuit to hold DOI accountable, and to respectfully request
24 that the Court order DOI to produce the external communications requested.

25 6. The records requested by Sierra Club are of significant public interest and concern,
26 making timely disclosure imperative here. In the first year of DOI Secretary Ryan Zinke’s tenure,
27 the agency recommended slashing the size of national monuments, opening vast swaths of the
28 coastline to drilling, and cutting protections for endangered species to make way for private

1 development on public lands. After Secretary Zinke departed in the agency in 2018 amid a rising
2 tide of ethics inquiries, these activities continued under former Deputy Secretary David Bernhardt,
3 who was confirmed as the agency's new head in April 2019.

4 7. Under Secretary Bernhardt's leadership, the agency remains embroiled in
5 allegations of ethical violations. On the fourth day of Secretary Bernhardt's tenure, the agency's
6 inspector general opened investigations into complaints regarding conflicts of interest and other
7 ethical matters. Secretary Bernhardt is also being investigated by the U.S. House Natural
8 Resources Committee for potential ethical violations, including related to his past lobbying work.
9 Based in part on concerns over the potential conflicts of interest of Secretary Bernhardt and others
10 within the agency, Sierra Club brings this lawsuit seeking certain DOI officials' external
11 communications.

12 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

13 8. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and
14 28 U.S.C. § 1331.

15 9. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) because Plaintiff Sierra
16 Club has its principal place of business in Oakland, California.

17 10. For the same reason, intra-district assignment is proper in the San Francisco or
18 Oakland Division. *See* N.D. Cal. L.R. 3-2.

19 **PARTIES**

20 11. Plaintiff Sierra Club is incorporated in the State of California as a Nonprofit Public
21 Benefit Corporation with headquarters in Oakland, California. Sierra Club is the nation's oldest
22 environmental grassroots organization and has more than 782,000 members nationwide. Sierra
23 Club is dedicated to protecting and preserving the natural and human environment, and its purpose
24 is to explore, enjoy, and protect the wild places of the earth; to practice and promote the
25 responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to
26 protect and restore the quality of the natural and human environments. Sierra Club is a leading
27 non-governmental organization seeking to educate and mobilize the public on issues related to our
28 public lands. In support of those efforts and to further Sierra Club's long-standing interest in

1 government accountability and transparency, Sierra Club submitted to DOI the FOIA request at
2 issue in this case.

3 12. Plaintiff brings this action on its own behalf and on behalf of its members. Plaintiff
4 and its members have been and continue to be injured by Defendant's failure to provide requested
5 records within the timeframes mandated by the FOIA. The requested relief will redress these
6 injuries.

7 13. Defendant DOI is an agency of the executive branch of the United States
8 government within the meaning of 5 U.S.C. § 551(1). It has in its possession and control the
9 records sought by Sierra Club and is therefore subject to FOIA under 5 U.S.C. § 552(f).

10 **STATUTORY FRAMEWORK**

11 14. FOIA requires that federal agencies promptly release, upon request by a member of
12 the public, documents and records within the possession of the agency, unless a statutory
13 exemption applies. 5 U.S.C. § 552(a)-(b).

14 15. Within twenty business days of an agency's receipt of a FOIA request, the
15 agency must "determine . . . whether to comply" with the request. 5 U.S.C. §
16 552(a)(6)(A)(i). The agency must "immediately notify" the requester of "such
17 determination and the reasons therefor." *Id.* If an agency determines that it will comply
18 with the request, it must "promptly" release responsive, non-exempt records to the
19 requester. 5 U.S.C. § 552(a)(6)(C)(i).

20 16. If the agency fails to comply with the statutory time limits, the requester is deemed
21 to have exhausted her administrative remedies. *Id.* District courts may enjoin an agency from
22 withholding agency records and "order the production of any agency records improperly
23 withheld." 5 U.S.C. § 552(a)(4)(B).

24 **STATEMENT OF FACTS**

25 Industry Influence at the Department of the Interior

26 17. The public has watched closely as DOI has elevated private industry interests at the
27 expense of protections for public lands. In the first year of Ryan Zinke's tenure as Secretary of the
28 Interior, Secretary Zinke and his staff took numerous actions that privilege private development

1 over public lands and public health. For example, DOI (i) opened nearly all of the U.S. coastline
2 to offshore drilling; (ii) delayed the implementation of a rule designed to curb the release of
3 methane, a potent greenhouse gas; (iii) sought to overturn a moratorium on new leases for coal
4 mining on federal land; (iii) recommended dramatic reductions in the size of national monuments
5 such as Bears Ears and Grand Staircase-Escalante in Utah; and (iv) proposed an overhaul of a
6 comprehensive plan to protect the greater sage grouse so that much of the bird's habitat will be
7 open to resource extraction. The agency's focus on resource extraction is continuing under the
8 new Secretary of the Interior, David Bernhardt, who previously served as the Deputy Secretary
9 under Ryan Zinke.

10 18. The links between industry and DOI's staff are well documented. As a
11 congressional representative, Former Secretary Zinke was a champion of the leasing of public
12 lands for mineral extraction. As Secretary, he interacted with fossil fuel interests in the course of
13 his official duties. For example, DOI's inspector general conducted a formal investigation of the
14 former Secretary's twelve-thousand-dollar charter flight on a plane owned by oil and gas
15 executives.

16 19. Secretary David Bernhardt previously worked at DOI under George W. Bush;
17 while he was there, connections between DOI and industry were widely reported. After his
18 previous DOI tenure, Secretary Bernhardt worked as a lobbyist on behalf of fossil fuel energy and
19 mining companies.¹

20 20. Associate Deputy Secretary of the Interior James Cason also previously served at
21 DOI under the Reagan and George W. Bush administrations. His positions outside government
22 have been with industry trade groups and energy interests. He is now reported to be heading a
23 task force that will cut back regulatory protections for public lands and the environment, and is
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26 ¹ See Juliet Eilperin, *Zinke's #2 Has So Many Potential Conflicts of Interest He Has to Carry a*
27 *List of Them All*, Washington Post, Nov. 19, 2018,
28 https://www.washingtonpost.com/national/health-science/the-man-behind-the-curtain-interiors-no-2-helps-drive-trumps-agenda/2018/11/18/6403eb4c-e9ff-11e8-b8dc-66cca409c180_story.html?utm_term=.c1f260601fe1.

1 reported to be leading an effort to reassign dozens of top career officials, including scientists
2 working on climate change issues, in DOI.

3 21. Principal Deputy Assistant Secretary for Policy, Management and Budget Scott
4 Cameron also worked as a lobbyist on behalf of fossil fuel interests in the years prior to joining
5 DOI.

6 22. Assistant Secretary for Policy, Management, and Budget nominee Susan Combs
7 also has a history of industry connections, having held positions, among others, at the Texas
8 Public Policy Foundation, which has received funding from the oil and gas industry.

9 23. Bureau of Land Management senior advisor Kathleen Benedetto co-founded the
10 Women's Mining Coalition, which promotes the mining industry. She has made public statements
11 in support of weakening environmental regulations, including statements discounting the need to
12 protect endangered species and treating extinction as a natural process.

13 24. Principal Deputy Solicitor Daniel Jorjani previously served as an advisor to Charles
14 G. Koch and has been reported to have had extensive industry contacts in his tenure in office so
15 far.

16 25. Deputy Assistant Secretary for Fish, Wildlife and Parks Aurelia Skipwith
17 previously worked at Monsanto, and her appointment has been reported to be focused on tackling
18 the issue of energy development on public lands.

19 Ethical Issues at DOI

20 26. The public also has an interest in DOI's activities in light of the many ethics
21 investigations focused on the agency.

22 27. Former Secretary Zinke departed the agency in December 2018 amid a cloud of
23 alleged ethics violations and investigations. Among other things, Former Secretary Zinke was
24 investigated for allegations of inappropriate travel expenditures and for a Montana land deal that
25 involved one organization run by the Secretary's wife and another organization backed by the
26 chairman of Halliburton, a company deeply involved in resource extraction on public lands.

27 28. Ethics inquiries have continued to swarm around Secretary David Bernhardt, the
28 successor to Former Secretary Zinke. Secretary Bernhardt is the subject of inquiries by the U.S.

1 House of Representatives' Committees on Natural Resources and Oversight into compliance with
 2 recordkeeping requirements and alleged ethical violations. Among other things, the committees
 3 have identified potential conflict-of-interest violations and issues related to the Secretary's past
 4 work as an industry lobbyist.

5 Sierra Club Requests for DOI External Communications

6 29. Because of the widespread concern that DOI decisionmaking is unduly influenced
 7 by industry representatives or clouded by ethical concerns, Sierra Club—a strong supporter of
 8 public lands and the transition from fossil fuels to clean energy—submitted FOIA requests to DOI
 9 on in 2017 and 2018 requesting the following, for the period January 23, 2017 through the date of
 10 the agency's search for responsive records, for a defined set of DOI Personnel:

- 11 1. All emails, text messages, faxes, voice mails, and other form of communications from, or
 12 to, the DOI Personnel with any person outside of DOI, as well as any phone logs or other
 13 indices which memorialize communications with such persons.
- 14 2. All calendars, whether electronic or in paper format, of the DOI Personnel for the above
 15 listed time period.
- 16 3. All sign-in sheets or other records memorializing attendance at any meetings with the DOI
 17 Personnel for the above-listed time period at which a person outside of DOI was in
 attendance.
- 18 4. All emails, faxes, voicemails, text messages or other forms of communication that have
 19 been deleted that fit the above specifications and have been deleted, but remain recoverable
 in any way.

20 *See Exhibits A, B, C, and and D.*

21 30. Sierra Club submitted the requests as part of its ongoing national effort to protect
 22 our public lands and promote the transition from fossil fuels to clean energy sources.

23 31. The DOI Personnel covered by the requests are Former Secretary of the Interior
 24 Ryan Zinke, Former Deputy Secretary (now Secretary) of the Interior David Bernhardt, Associate
 25 Deputy Secretary of the Interior James Cason, Principal Deputy Assistant Secretary for Policy,
 26 Management and Budget Scott Cameron, Assistant Secretary for Policy, Management, and Budget
 27 nominee Susan Combs, Acting Deputy Director of the Bureau of Land Management Kathleen
 28 Benedetto, Principal Deputy Solicitor Daniel Jorjani, and Deputy Assistant Secretary for Fish,

1 Wildlife and Parks (now nominee to be Director of the Fish and Wildlife Service) Aurelia
2 Skipwith.

3 32. The 2017 and 2018 requests set forth certain definitions and exclusions. They
4 defined the term “person outside of DOI” to mean “any person who is **not** an employee within the
5 DOI,” and stated: “We are **not** seeking communications to or from persons employed elsewhere
6 within the Executive or Legislative Branches of the United States; persons employed by the
7 executive branch of any state (*i.e.*, state agencies); or persons who have an executed contract to
8 provide consulting or other services to DOI. You may also specifically exclude from processing
9 and release any records that are publicly available (*e.g.*, through regulations.gov).” The requests
10 also excluded any materials provided in response to certain of Sierra Club’s prior FOIA requests.

11 33. DOI did not make a final determination on the 2017 and 2018 requests or produce
12 responsive documents in accordance with the statutory deadlines set forth in 5 U.S.C. §
13 552(a)(6)(A)(i). For that reason, in 2018 Sierra Club brought a lawsuit currently pending in this
14 Court, *Sierra Club v. U.S. Department of Interior*, No. 18-cv-00797-JSC (N.D. Cal.).

15 34. In connection with the 2018 *Sierra Club* case, DOI has not finished producing
16 documents responsive to Sierra Club’s 2017 and 2018 requests. In addition, DOI has informed
17 Sierra Club that the searches used to obtain responsive documents are only up to date through
18 March 2018. DOI has refused to update the searches in response to the 2017 and 2018 requests.
19 Accordingly, on February 20, 2019, Sierra Club sent an additional request to DOI asking for the
20 results of updated searches starting March 1, 2018 through the date of an updated search for
21 custodians Zinke, Bernhardt, Cason, Cameron, Skipwith, and Combs. The 2019 request is
22 attached hereto as Exhibit E.

23 35. DOI acknowledged receipt of the February 20, 2019 request on February 26, 2019,
24 and assigned it control number OS-2019-00516. DOI has not, however, made a determination on
25 the request or produced responsive documents.

26 36. FOIA required DOI to make a final determination upon Sierra Club’s request
27 within twenty working days of the request, which was on or about March 20, 2019, and to produce
28 documents responsive to the request immediately thereafter. *See* 5 U.S.C. § 552(a)(6)(A)(i).

1 37. DOI's recent activities are of significant public interest and concern, making timely
2 disclosure imperative here. In light of the many recent DOI decisions that appear to privilege
3 resource extraction and other narrow interests over that of the public as whole, as well as the many
4 recent ethics probes focused on DOI, it is critical that the public be able to understand the agency's
5 outside contacts and influences.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF FOIA, 5 U.S.C. § 552**

8 38. Plaintiff re-alleges and incorporates by reference all the foregoing paragraphs in
9 this Complaint as though fully set forth herein.

10 39. Upon its records request to DOI dated February 20, 2019, Sierra Club became
11 statutorily entitled under FOIA to receive from DOI all records responsive to its request not
12 specifically exempted by FOIA.

13 40. At a minimum, FOIA required DOI to provide Sierra Club with a final
14 determination upon Sierra Club's February 20, 2019 request on or about March 20, 2019, and to
15 produce records responsive to the requests immediately thereafter.

16 41. DOI has failed to provide Sierra Club with a final determination upon Sierra Club's
17 request, and is thus in violation of FOIA.

18 42. DOI has failed to produce to Sierra Club any documents responsive to Sierra
19 Club's request, and is thus in violation of FOIA.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Sierra Club respectfully requests that this Court enter judgment against
22 DOI as follows:

23 1. Declaring that DOI has violated FOIA by failing to make a final determination
24 upon Sierra Club's FOIA request and by failing to produce non-exempt records responsive to
25 Sierra Club's FOIA request by the statutory deadlines;

26 2. Ordering that DOI immediately produce the requested records to Sierra Club;

27 3. Retaining jurisdiction over this matter to rule on any assertions by DOI that certain
28 records are exempt from disclosure;

- Dated: May 22, 2019

/s/ Ellen Medlin Richmond

Counsel for Plaintiff SIERRA CLUB